

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

April 24, 2009

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

OAHU

Extension of Lease Term, General Lease No. 3854, Patrick and Nancy Maloney,  
Lessee, Waimanalo, Koolaupoko, Oahu, Tax Map Key:(1) 4-1-026:018.

REQUEST:

Extension of General Lease No. S-3854 for 10 years, commencing on August 10, 2009, and  
expiring on August 9, 2019, for an aggregate term (initial term plus all extensions) of 55  
years.

LEGAL REFERENCE:

Section 171-36(b), Hawaii Revised Statutes, as amended.

LOCATION AND AREA:

Portion of Government lands known as Lot 47, Waimanalo Agricultural Subdivision situated  
at Waimanalo, Koolaupoko, Oahu, identified by Tax Map Key: (1) 4-1-026:018, consisting  
of approximately 5.492 acres, as shown on the attached map labeled Exhibit A.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES \_\_\_\_ NO  
  X  

CHARACTER OF USE:

Diversified Agriculture

TERM OF LEASE:

Original term of 20 years, commencing on August 10, 1964 and expiring on August 9,

1984. Extension of lease for 25 years was granted from August 10, 1984 to August 9, 2009.

Requested extension of 10 years commencing on August 10, 2009 to August 9, 2019.

ANNUAL RENTAL:

\$3,530.00, due annually.

RENTAL REOPENINGS:

Reopenings in the original term were at the end of the 30th and 40th years of the term. The last rental reopening occurred on August 10, 2004.

The only reopening for the extended term shall be on April 24, 2009 (immediate reopening).

USE OF LOAN PROCEEDS:

The lessees plan to use approximately \$43,300 of their own personal savings to replace the roofing of the shade houses, purchasing wooden hydroponic tray for the cultivation of his hydroponic lettuce operation, and refrigerators for the packaging of the crops.

DCCA VERIFICATION:

Not applicable. Applicants are sole proprietors, and as such are not required to register with DCCA,

APPLICANT REQUIREMENT:

The applicant shall be required to pay for an appraisal for the immediate rental reopening.

REMARKS:

GL S-3854 was sold at public auction for diversified agriculture use for a term of 20 years commencing on August 10, 1964, and through extension, expiring on August 9, 2009. Currently, Patrick and Nancy Maloney are the lessees.

By way of a letter dated May 13, 2008, the lessees requested that the lease be extended for 10 years, commencing from August 10, 2009 to August 9, 2019. Staff did not process this request in 2008 due to an ongoing investigation of violation on the premises.

At its meeting of September 26, 2008 (item D-10), the Board deferred staff recommendation for forfeiture action for sixty (60) days to provide the staff an opportunity to seek an opinion from the Department of the Attorney General (AG) on whether the unauthorized improvements on the premises can be legitimized by an after-

the-fact approval or demolition is the only means to correct the violations. Depending on the opinion from the AG, the lessees were to cure the defaults accordingly. Further, the lessees needed time to correct the use violation (aquaculture).

The Department recently received an opinion from the AG advising that the Board cannot enforce the pre-approval construction requirement against the lessees if the improvements were already on the premises when the lease was assigned to the lessees.

According to the lessees, the improvements were on the premises when they bought the lease in 1982. After reviewing the file, staff notes that there are no records of improvements on the premises as of 1982. A construction plan dated 1973 indicates multiple improvements on the premises, including shade houses, storage buildings etc, which are similar to the improvements cited in the 2008 notice of default. Based on this finding, staff believes that the improvements were on the premises before the lessees bought the lease, and the violation issue becomes moot. The lessees has stopped their commercial aquaculture operation on the premises.

With the violation issue resolved, the lessees want to reactivate their request for an extension.

The lessees will be using their own savings to finance the proposed improvement and the operation on the premises as described in the "Use of Loan Proceeds" section. Pursuant to Section 171-36(b), HRS, the lessees "may amortize the cost of substantial improvements to the demised premises that are paid for by the lessee without institutional financing".

The lessees produce a letter from Bank of Hawaii stating a lease term for no less than 10 years is required for a \$20,000 or more mortgage. Using this letter as a yardstick, staff believes the proposed improvement expense (\$43,300) relating to a 10-year lease extension request is reasonable. Staff has no objections to such request.

The lessees are in compliance with the terms and conditions of the subject lease, and the premises is used for which the premises is leased.

Staff did not solicit comments from other governmental agencies as there is no change in the use of the premises.

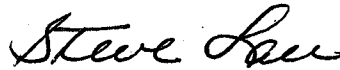
There are no other pertinent issues or concerns, including rental reopening.

#### RECOMMENDATION:

That the Board, subject to the Applicant fulfilling the Applicant requirement listed above, authorize the extension of General Lease No. S-3854 under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

- A. The standard terms and conditions of the most current lease extension form, as may be amended from time to time;
- B. Review and approval by the Department of the Attorney General; and
- C. Such other terms and conditions as may be prescribed by the Chairperson which are in the interests of the State.

Respectfully Submitted,



Steve Lau  
Land Agent

APPROVED FOR SUBMITTAL:

  
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Laura H. Thielen, Chairperson 

